D.B.CIVIL SPECIAL APPEAL (CIVIL) NO. 119/2006
Harnam Singh v. Roop Singh & ors.

Date of order : 07.11.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri N.L.Joshi for the appellant

This special appeal is directed against the decision of the learned Single Judge dated 20.2.2006 in S.B.Civil Misc. Appeal no. 111/1988 dismissing the appeal of the appellant under section 299 of the Indian Succession Act (in short, 'the Act'). The appeal had arisen from an order under section 263 of the said Act on application which the appellant had filed for revocation of the letters of administration.

The dispute relates to a will said to have been executed by Bahal Singh in favour of one of his sons, Roop Singh, on 5.11.1976. The appellant is another son of Balal Singh. Bahal Singh died soon after execution of the will on 11.11.1976. On 6.12.1976 Roop Singh filed application under section 278 of the Act for grant of letters of administration. The District Judge, Sri Ganganagar after evidence etc. granted letters of administration on 7.11.1979. The appellant too had been cited a person interested and he was duly served but he chose not to appear and contest the grant. Evidence led in the proceeding for revocation of the grant which he later filed, shows that he refused to accept the notices. Two witnesses were examined on the point of

service of notice.

The only point urged on behalf of the appellant is that the applicant was required to produce the original will; instead, he filed a photocopy of the will which according to the counsel was not due compliance of the requirements rendering the proceeding for grant of letters of administration "defective in substance", and the District Judge committed error in rejecting the application for revocation of letters of administration.

Section 278 of the Act lays down the ingredients of petition for letters of administration. It does not prescribe that the application should be annexed with a copy of the original will. Section 290 of the Act provides that letters of administration can be granted with or without a copy of the will annexed. The original will enables the Court to determine the genuineness of will. Letters of administration was granted in the instant case on being satisfied on the basis of evidence that the will was genuine and on proof of its due execution. It may be mentioned that on receipt of citations other heirs of the testator appeared in the proceeding and did not dispute the genuineness of the will . The appellant on the other hand chose not to respond to the citation and allowed the proceeding to be completed ex parte against him. He has lost before the District Judge as well as the learned Single Judge and it would appear that the dispute is

concluded by concurrent findings. It is to be kept in mind that grant of letters of administration does not amount to creation or extinguishment of one's title. In these premises we are not inclined to interfere with the impugned orders.

The appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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